

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

| | | |
|------------------------|---|------------------------|
| In re: |) | |
| |) | |
| ADEMOLA ADETULA and |) | |
| HOMER STRICKLAND, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | Case No. 2:18-CV-00612 |
| |) | |
| UNITED PARCEL SERVICE, |) | |
| UNITED PARCEL SERVICE |) | |
| GENERAL SERVICES, |) | |
| |) | |
| Defendants. |) | |
| |) | |
| _____ |) | |

BEFORE THE HONORABLE BROOKE WELLS

May 15, 2019

Transcript of Electronically Recorded
Motion Hearing

Appearances of Counsel:

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Salt Lake City, Utah May 15, 2019

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THE COURT: Calling now case number 2:18-CV-612 assigned to Judge Parrish and referred to me. Let me first ask who we have on the phone.

MR. BARTON: Good morning, Your Honor, David Barton
with the law firm of Burns Barton representing United Parcel
Service.

THE COURT: All right. Thank you, Mr. Barton. Who do we have in court today?

MR. ANDRUS: Good morning, Your Honor. Randy Andrus for the plaintiffs who are present, Mr. Adetula and also Mr. Strickland.

THE COURT: Welcome, gentlemen. You probably notice there is something amiss with my voice and there is. I have had some problems with it. I had a voice treatment and this is apparently what I get for a week or so. Anyway, I hope you can hear me. If you can't, please ask me to try and speak up and I'll do my best.

All right. This is now a second status conference after we had our first one and after the court issued its order. Let's -- I think we have two key issues to deal with today. First is plaintiffs' Amended Motion For Discovery and Motion to Expedite the Discovery Motion and for that the hearing is set. But the issues are what is the relevant

1 time period for discovery is it as plaintiffs claim 1975 or
2 1983 or is it October 31st, 2014, or some other appropriate
3 day. Also, I think we have the question to answer of can
4 plaintiffs -- one plaintiff's request be used to get
5 discovery for both plaintiffs. All right. Now, I think the
6 first issue is relevant for plaintiffs. Let me ask counsel
7 if you'll proceed, please.

8 MR. ANDRUS: Yes, Your Honor, thank you. Yes our
9 position on the relevant time period is that yes there could
10 be various dates that could be selected. One would be
11 certainly 1975 when UPS first came to Utah, or 1983 when one
12 of the plaintiffs was first hired or 1993 when --

13 THE COURT: Excuse me, go ahead.

14 MR. ANDRUS: 19 -- actually 1993 is what we propose.
15 That's the time that the --

16 THE COURT: Go ahead.

17 MR. ANDRUS: -- the call center where plaintiffs worked
18 in Salt Lake City was organized so that makes maybe more
19 sense if it's not earlier, but nevertheless, another one
20 could be, you know, just say randomly 2000 or even say 2003
21 but I hesitate to go there because the defendants have asked
22 for the plaintiffs medical records and they obviously want
23 those medical records back to 2003 so they think that there
24 is information that's beyond the quote unquote the statute
25 of limitations in the case filing that would be relevant for

1 their claims. Likewise we believe that the relevant verdict
2 for discovery may be different than the liability period.
3 And so I want to be clear that I think that the defendants
4 are kind of trying to box plaintiffs into a liability period
5 but for purposes of discovery the relevant period may be
6 information that's before the liability or the violation
7 period to show the impact that happened in the liability
8 violation period.

9 THE COURT: Let's be practical what would your bottom
10 line be in terms of time?

11 MR. ANDRUS: We are requesting 1993 simply because
12 that's when the call center where all of this happened was
13 organized and started. And it doesn't seem like it's any
14 more burden or proportional or anything else problems to
15 enter that date as opposed to some other date to show these
16 patterns and practices and the impact of the decisions on
17 plaintiffs that have an impact during the liability or the
18 violation period for the treatment that they did have.

19 And there is also this notion of continuing acts are
20 relevant particularly in hostile work environment claims
21 such as here this continuing violation doctrine. So all of
22 these documents that we requested cast light on the
23 allegations and the defenses of the parties.

24 THE COURT: Remind me again when each defendant began
25 his employment.

1 MR. ANDRUS: Yes. Mr. Strickland, he began his
2 employment back in the 1983-1984 timeframe. And Mr. Adetula
3 began his employment in approximately 1995. And so that's
4 when this call center at GBS call center that they work at
00:08:06 5 was organized. So that's our position in terms of the
6 discovery that casts light on we need that width and breadth
7 to be able to show and address the decisions that were made,
8 the conduct and the acts of discrimination, and put those in
9 context for the liability period. And so we believe it's
00:08:30 10 not unreasonable and the defendant's have not shown that it
11 is going to be anything different than punching in a
12 different date and providing us with that information than
13 something -- some later date. Thank you.

14 THE COURT: Thank you. Counsel?

00:08:54 15 MR. BARTON: Thank you, Your Honor. You know statutes
16 of limitations serve a purpose. One purpose obviously is to
17 require that claims be brought in a time when information
18 and memories and data are available. So in the Title VII
19 context, the context of this case, the statute of
00:09:19 20 limitations is 300 days. The plaintiff may not maintain a
21 claim based upon an event that occurred more than 300 days
22 before he or she files for charge of discrimination. And if
23 we take the most generous approach in this case and look
24 back at the very first charge filed by either of these
00:09:41 25 gentlemen, that is October of -- or August 31st of 2015

1 which already is pushing the document retention limits and
2 guidance that the law has with regard to preserving
3 documents and data. The other reason for the statute of
4 limitations is exactly that. A company like UPS cannot
5 maintain infinitely or indefinitely records or documents
6 related to employees. And so in this case even if we took
7 the date that the employee first put the charge on file in
8 2015 and said okay what's 300 days before that, we go back
9 to October 31st 2014 that is five years of data, five years
10 of decisions that arguably could have impacted the
11 employment of these employees and that's plenty of data to
12 show if there is such a claim that in fact has been some
13 discriminatory acts maintained against these individuals.
14 What plaintiff has proposed is that we go back to 1993.
15 That is 26 years of data potentially and I can't even make
16 any assurances that we have that data because our document
17 retention guidelines are all geared to the law. We keep
18 records as long as we are required to keep them under the
19 law. And so I can't even make any assurances about what we
20 may or may not have going back that far. What I can tell
21 you is that any evidence from prior to October 31st, 2014 is
22 going to be inadmissible because plaintiffs simply cannot
23 maintain a claim based on something that happened prior to
24 that date because he didn't exhaust his administrative
25 remedies, it is barred by the statute of limitations.

1 And so it does not seem proportional to the needs of
2 this case to require UPS to search for documents that it may
3 or may not have that go back 26 years when in fact those
4 documents will never serve and cannot serve as a basis of a
5 claim. So our position is look, we'll be glad to produce
6 everything that could be relevant prior to October -- August
7 of 2015, that's what's proportional to the needs of this
8 case, that's what's appropriate to the needs of this case,
9 and it's not as if plaintiff claims that it's a matter of
10 putting in a different number and just simply spitting out
11 the data. As I explained in our -- in our response or our
12 status conference, as I explained during our meet and
13 confer, the affirmative action plans are a good example.
14 The law requires you to maintain the data for affirmative
15 action plans for the current year and the two prior years.
16 That's all I have got. So I can't just -- I can't put in
17 more data and say okay, the relevant period is now, you
18 know, 26 years and this will give me all of the data. It's
19 going to be a frustrating exercise, it's going to be an
20 exercise of challenging whether everyone of these databases
21 go back that far. We change databases from time to time, we
22 change storage capacities from time to time, we change
23 software programs reviews from time to time, so it requires
24 the 26 year request made by plaintiff would simply be unduly
25 burdensome in this case and would not be proportional for

1 the needs of this case.

2 THE COURT: Well then how hard would it be to actually
3 look and see if you have data going back that far?

4 MR. BARTON: Um, I would -- this is the other thing I
5 tried to explain to plaintiff during our meet and confer,
6 Your Honor. It is not as if -- he keeps claiming that UPS
7 has some relational database where all of this is stored.

8 That is not the case. Um, for example, take the request for
9 personnel file, okay? UPS does not maintain what you would
10 traditionally associate with a personnel file, a manila file
11 folder in somebody's file cabinet somewhere related to these
12 employees. We don't have that kind of a thing. We have

13 information about employees that we keep in different
14 databases that's available for a period of time. And that
15 information includes, for example, their application for
16 employment, their health related benefit requests and those
17 kinds of things which also change overtime. So to answer
18 the question how hard would it be to know? It depends on

19 the type of information requested. It depends on the number
20 of databases that have been used in that period of time to
21 store or collect that data. It depends on -- on what
22 plaintiff is asking for. Here is another good example.

23 Plaintiff in one of his requests asks us to produce
24 information about the supervisors who had been employed at
25 GBS during the quote relevant time period. Well, I can go

1 back, I have records that would tell me what -- what
2 supervisors have been employed from 2015 to present because
3 that's -- that is information that I have in my current
4 database. And then he wants me to tell him the race, the
00:15:19 5 ethnicity, the evaluation criteria, all of that with regard
6 to every one of those employees. Well I don't keep
7 evaluation criteria that's a whole other database for those
8 supervisors. So just to answer that request, I have got to
9 look at least two different databases, my list of employees
00:15:42 10 who have been supervisors in that region in that -- in GBS
11 in Salt Lake City, and then I have got to get to the -- to
12 the evaluation system that was used during their relevant
13 periods. So during the past five years there have been two
14 evaluation systems used for supervisors and managers in Salt
00:16:01 15 Lake City. If I go beyond five years, I'm going back to
16 paper that I probably don't even have to be honest with you
17 because they were not using an electronic format.

18 THE COURT: Don't you keep data for purposes of
19 reporting as to the number of minority employees you have?

00:16:28 20 MR. BARTON: We do have self-identifying data
21 information. The court may be familiar with what are called
22 EEO1 reports. These are -- this is information that the
23 employees self-identify about their race or national origin.
24 If they choose, they can opt out, but if they choose to
00:16:58 25 identify themselves as a minority applicant or employee,

1 they can. We do keep that. But again, it is according to
2 the statute of limitations which is the current year and two
3 prior years. So that's only three years of data that I have
4 got.

00:17:12 5 THE COURT: All right. I understand your position.
6 Anything else?

7 MR. BARTON: I'm sorry I haven't made it clear. My
8 point is, Your Honor, there is a relevant time period here
9 and that time period is the -- should be and equal to the
00:17:31 10 statute of limitations as the *Oppenheimer Fund* case from the
11 Supreme Court has said information prior to that relevant
12 time period as it might pertain to plaintiff's claim is not
13 going to be admissible in this case because it cannot form
14 the basis of his claim. So we believe that the relevant
00:17:50 15 time period should be limited to the statute of limitations.
16 That gives him five years of data. That is a proportional
17 response.

18 THE COURT: All right. Thank you. Counsel, any
19 response?

00:18:09 20 MR. ANDRUS: Yes, Your Honor. He just cited this
21 *Oppenheimer Fund* case, but even the case itself says sure
22 there is this statute of limitations period, that's the
23 liability period, but the relevant period for purposes of
24 discovery which is broad, the *Oppenheimer* case says unless
00:18:35 25 the information sought is otherwise relevant to the issues

1 in the case and that's the situation that we have here.
2 This information is relevant to the issues in the case. And
3 whether -- a test is not whether it is admissible later on
4 even, but what is, of course, the code was changed in terms
5 of lead to something that is admissible but it's relevant
6 for the defenses and the claims that are being made.

7 We did cite, the last time we were here, and provided a
8 copy to counsel and the court of that *EEOC versus UPS* case,
9 2017, where it specifically talked about the *Oracle*
10 database. And so to say that they don't have this data when
11 they -- it doesn't even sound like they have looked or made
12 a search to find out or what it is, then we submit that they
13 haven't made a diligent effort to do that, to look at the
14 various sources and pockets that they may have this data in.
15 And, of course, I want to underscore the fact that UPS, Inc.
16 has not provided any response to the discovery at all.
17 Thank you.

18 THE COURT: All right.

19 MR. BARTON: May I address that, Your Honor?

20 THE COURT: Yes, I was going to ask you to, please.

21 MR. BARTON: Thank you. First of all, the EEOC --
22 sorry, the *EEOC versus UPS* case his reliance on that is
23 misplaced. That case was looking for one very specific data
24 set. They were looking for information related to injuries
25 and UPS employees that are kept and again a very specific

1 database for -- that could be produced, that had nothing to
2 do with employment discrimination or promotions or anything
3 like that. So for him to suggest that I have got a
4 relational database and that the *EEOC* case, *EEOC versus UPS*
5 out of the Sixth Circuit proved that is absolutely false.
6 Look at the case and look at the information that was at
7 issue there had nothing to do with employment, it had to do
8 with employee injuries and data maintained according to OSHA
9 requirements with regard to those employee injuries. That's
10 a different database and yes, as I say, we have -- I can
11 tell you this, UPS has more than 600 databases where they
12 keep information relative to their operations and their
13 employees. So there are a lot of databases where we have
14 information which is why it is very important for us to have
15 a -- and those databases change, which is why it's very
16 important for us to have a very clear definition of what
17 time period we're looking at so that I can come back to the
18 court and tell you yes we have that data or no, we don't.
19 And that's what we met about and met and conferred about is
20 why we needed this information from the court is we need the
21 court to decide okay, what is the period of time I'm going
22 to ask UPS to look and we will. At present, our position
23 has been that it is limited to statute of limitations.
24 Obviously if the court sees it differently, we'll go back
25 and look and see if there is additional data back there that

1 we may be able to get. I don't believe there will be much
2 because it's not required under any data retention
3 guidelines or any law but we'll look.

00:22:22 4 THE COURT: All right. Then I will, although not at
5 this moment, determine what that relevant time period is.
6 So that will be taken under advisement. As to the second
7 question, Mr. Andrus.

8 MR. ANDRUS: I may have forgotten that second question
9 I believe it is the affirmative action plans.

00:22:49 10 THE COURT: Yes, I am -- and the question about
11 discovery as to one client being available to the second
12 plaintiff.

13 MR. ANDRUS: Okay. Right, yeah. When we propounded
14 the discovery back in November, we propounded it to both
00:23:10 15 defendants. And they both have been named, they're parties
16 and so the issue here on that is we think it is
17 just unbelievable that a defendant who has propounded with
18 discovery has not provided a response. We raised that all
19 along the way in our meet and confer letter, in discussions
00:23:37 20 before the court the last time, we raised it in the May 3rd
21 meet and confer session and still to this day I have not
22 received a response by UPS, Inc. to the discovery. And so
23 we request that the court order UPS, Inc. to provide fully
24 complete verified responses without objections. They seem
00:24:07 25 to have been waived at this point because they have

1 consciously just not done it despite multiple requests and
2 bringing it to their attention to do so.

3 So it is just I think in their response they indicated
4 something well we'll make a response or we'll confirm what
00:24:31 5 GS, the other entity, did or didn't do. Well they still
6 haven't done that. So we're left here today six months
7 after the fact with no discovery responses from that -- that
8 defendant. So we request that the court order that. And as
9 to the other part of that question or is that -- does that
00:24:56 10 address that?

11 THE COURT: No, go ahead.

12 MR. ANDRUS: They wanted to raise the affirmative
13 action plan and limit say well we have -- first of all we
14 couldn't get a definitive response to them what documents
00:25:12 15 they were withholding based on this any kind of a privilege
16 including a self critical analysis privilege and now it
17 appears that in their status report they indicate they
18 really haven't done an analysis but there is -- there are
19 documents out there about affirmative action plans and so
00:25:34 20 now they say well, we don't have affirmative action we only
21 do affirmative action plans for disability and veterans and
22 that's what we have to report to the government, but we may
23 have this data, this information, about race and gender out
24 here but we don't have to produce that to you because
00:25:55 25 somehow it's self critical analysis. Well, I believe there

1 is no self critical analysis and I think in their report
2 they have all but said that they haven't done an analysis
3 but there is this data out there. So I think they have kind
4 of let us down a red herring here in terms of -- of what are
5 talking about. And I guess it kind of boils down if they
6 have documents responsive to the requests, then please
7 identify them and produce them. If you don't have documents
8 then say you don't have documents but don't let us have to
9 keep spinning our wheels here. But we think that there are
10 documents and specifically as to the affirmative action
11 plans there is an equal opportunity statement that they have
12 and I after we looked at this, and I do have a copy for the
13 court and counsel, it is document that they have not
14 produced in the 5,000 pages that they have produced which
15 talks about affirmative action plans and it even says that
16 the -- that the affirmative action plan can be available
17 upon review by applicants and employees by appointment with
18 the district human resources manager. And I have
19 highlighted that and I can provide that to the court if --

20 THE COURT: No.

21 MR. ANDRUS: No?

22 THE COURT: Not necessary.

23 MR. ANDRUS: Thank you. So they do have these plans
24 and so that we do ask that this -- that the court order that
25 any affirmative action plans or programs or information

1 program I guess they call it or plans be produced to us so
2 that we can look at it. Their literature says that it
3 exists and it will be made available and requests have been
4 made by the plaintiffs but they have not been shown. So
5 this data and this affirmative action plans we ask that they
6 be ordered to produce.

7 THE COURT: Mr. Barton, I'm concerned in the same way
8 that the plaintiffs are that it doesn't appear that there
9 has been any action taken to look for these things. What is
10 your response?

11 MR. BARTON: That's not true, Your Honor. Let me and
12 if you look at our response our statement of summary of the
13 defendant's status report that we filed on May 8th, on
14 Page 6 I explain exactly what I told the plaintiff during
15 our meet and confer which is that UPS gathers information
16 about, on a voluntary basis from employees who self-identify
17 that it gathers pursuant to Executive Order 110246 to assess
18 its -- the makeup of its employees based on minority status,
19 disability status, veteran status, and gender. That
20 information is governed by regulations published by the
21 OFCCP.

22 The OFCCP says that information related to veterans and
23 the disabled must be made available. So the document that
24 Mr. Andrus is pointing to saying that we will make that
25 information available is exactly that, it is information

1 related to veterans and women employed by UPS, and it is
2 available and we would make it available. But in this case,
3 it absolutely has nothing to do with the claims in this
4 case. Veterans, the number of veterans we employ and the
5 number of women we employ means nothing in a race
6 discrimination and failure to promote case.

7 So we point that out to Mr. Andrus and said tell us why
8 we should produce what we're required to produce because
9 we're not required to produce under OFCCP regulations the
10 information we gather related to minority status. That the
11 regulations simply do not require us to produce that
12 information. In fact they require that we maintain that
13 information confidential because it is information we get
14 voluntarily from our employees.

15 The other thing I explained to Mr. Andrus is that we
16 gather this information only on a nationwide basis. So I
17 have information, for example, about GBS as a whole across
18 the country. What he has asked for, and I have told him I
19 don't have, is specific information to Salt Lake. What are
20 the racial demographics of the UPS employees in Salt Lake
21 City. I don't -- our reports don't break it down that way.
22 The EEO1 reports that we prepare for the Office of Federal
23 Contractors Compliance only have nationwide data and
24 information which as I explained to Mr. Andrus I don't know
25 how it is going to possibly be helpful to him to show that

1 there is as he claims that there is some kind of some
2 discriminatory animus going on in Salt Lake City. That's
3 his claim.

00:31:49

4 THE COURT: Is Salt Lake City part of a smaller or a
5 larger region?

6 MR. BARTON: We gather data on a nationwide basis. So
7 I have a -- I have a report of the nation of my -- of the
8 information that --

00:32:09

9 THE COURT: But are you saying, I'm just asking, are
10 there regions within that UPS data collection basis? Like
11 is Salt Lake City part of a Rocky Mountain Region such that
12 such information could be broken down to cover let's say
13 those Rocky Mountain states?

00:32:39

14 MR. BARTON: The answer is that we do not compile the
15 data in that way. And I don't believe, I haven't asked, I
16 was asked if we could get information for Salt Lake City
17 only and they said no, because the data that we gather is
18 not compiled or collected in that way, it's collected on a
19 nationwide basis. So I have asked and been told no, that
20 that is not -- I can't do that, I can't break it down, I can
21 give you a nationwide report but that's all I have got.

00:32:57

22 THE COURT: All right. Mr. Andrus?

00:33:16

23 MR. ANDRUS: Well, we would like to have the nationwide
24 report because it gives the -- it sheds light on what
25 happens in the subset of Salt Lake City as the statistics

1 versus nationally.

2 THE COURT: All right then, Mr. Barton, if it is
3 available on a nationwide basis can you make that available?

4 MR. BARTON: I can make our EE01 report available, yes.

00:33:41

5 THE COURT: All right, then that's solved.

6 MR. BARTON: By the court's order, by the way, because
7 it is confidential. So I need --

8 THE COURT: I --

9 MR. BARTON: We don't turn it over.

00:33:50

10 THE COURT: By court order, yes, I'm going to order
11 that.

12 MR. BARTON: Fair enough.

13 THE COURT: Okay. And in what time period do you need
14 that, Mr. Andrus?

00:34:04

15 MR. ANDRUS: I would say within 10 days.

16 THE COURT: How about 10 business days?

17 MR. BARTON: Pardon?

18 THE COURT: Mr. Barton, can you provide that in 10
19 business days?

00:34:21

20 MR. BARTON: I cannot, Your Honor. We talked-- when
21 Mr. Andrus and I spoke at the meet and confer, I explained
22 to him that to gather the information he is asking for I
23 would need a -- I'm going to need some more time once the
24 court decides if it needs to be turned over. So, you know,
00:34:43 25 usually discovery requests is 30 days, I can do 20.

1 THE COURT: All right. Let's see, it is by court order
2 and let's make it in 20 working days. All right?

3 MR. ANDRUS: Thank you.

00:35:10

4 THE COURT: All right. Now, what else? Is there
5 anything else we can address? Is there anything further?

00:35:34

6 MR. ANDRUS: Um, well, I think those, you know, are the
7 biggest impediments but so we asked for that but we also
8 then would like a specific order for UPS to answer and
9 address each of the requests and provide answers to those as
10 we have set forth in our updated status report.

11 THE COURT: Okay. Mr. Barton, why has UPS chosen not
12 to answer? Mr. Barton? Mr. Barton? Can we try reaching
13 him again?

14 THE CLERK: He can dial back in again.

00:36:26

15 THE COURT: Okay.

16 MR. BARTON: There we go, Your Honor.

17 THE CLERK: Hello?

18 THE COURT: Mr. Barton?

19 MR. BARTON: There we are. Hello.

00:37:28

20 THE COURT: Okay. I think I am speaking in an echo
21 now. Just a second. Can you hear me now? Mr. Barton?
22 Mr. Barton? Hello?

00:40:15

23 THE CLERK: Hello? One more time and then maybe we can
24 call him directly. Should I try and call him directly? Are
25 you there? Hello? I think something is wrong with our

1 system.

2 THE COURT: With ours?

3 THE CLERK: I think so.

4 MR. ANDRUS: I have his cell phone number if that will
00:40:37 5 help. (602) 510 --

6 THE CLERK: (602).

7 MR. ANDRUS: Yes. 512, excuse me, 510-2994.

8 THE CLERK: 602.

9 MR. ANDRUS: (602) 510-2994. Yes.

00:41:30 10 THE CLERK: Call this one more time and let's see if we
11 can get in.

12 THE COURT: Yes. Mr. Barton?

13 MR. BARTON: Hello. Yes.

14 THE COURT: We reconnected somehow. Sorry if that's on
00:42:47 15 our end. Counsel was just discussing his request that you
16 answer the questions rather than leave it as no response
17 whatever. Can you give me a reason why I shouldn't grant
18 that order or that request?

19 MR. BARTON: Because you don't need to. The party
00:43:22 20 agrees.

21 THE COURT: As to UPS, sorry.

22 MR. BARTON: No, yeah the only reason you shouldn't is
23 because we have already agreed. If you look at Exhibit B to
24 our summary, when Mr. Andrus and I met to talk about this
00:43:36 25 issue I pointed out to him that the plaintiffs were employed

1 by GBS not UPS which is why we answered on behalf of GBS.
2 He has asked that we respond by -- on behalf of both
3 entities nonetheless and I agreed to do so. I told him that
4 when -- as soon as this court addressed the other issues we
5 were addressing, we would provide a response by UPS and
6 either provide separate answers to the extent those answers
7 are different and distinct, or simply say that UPS's answers
8 are the same as GBS's and I will do that. So there is no
9 need to order me to do so, I will do so.

10 THE COURT: By when?

11 MR. BARTON: We were also talking when we would produce
12 this information. I have asked for 20 days. If I could
13 have that time that is when I will do it.

14 THE COURT: Mr. Andrus, any response to that?

15 MR. ANDRUS: Well, they haven't responded and we have
16 brought it up multiple times and then his response he says
17 or confirm that its responses are consistent with. It is
18 still not a response. I don't know that I'm getting a
19 response. And if these documents are coming from UPS, it is
20 only right under the rules that I have responses from the
21 defendant and not some -- some other entity. So I would I
22 would appreciate an order. The timeframe I guess works for
23 me, I have been, you know, patient all along, but I would
24 request that still that the court order them to respond to
25 and grant the motion as to request for production 1 through

1 19 and interrogatories 1 through 7, please.

2 THE COURT: Any further response, Mr. Barton?

3 MR. BARTON: No, Your Honor, we will do so.

00:45:35

4 THE COURT: All right. Then that's the order of the
5 court. All right. Anything further?

6 MR. ANDRUS: Just we grant the motion and we also are
7 asking for our additional attorney's fees for having to now
8 compel this discovery effort even with UPS.

00:45:57

9 THE COURT: All right. Mr. Barton, any response to
10 that request?

00:46:18

11 MR. BARTON: Yes, Your Honor. We briefed that already.
12 This appears to be a tactic employed by Mr. Andrus to bully
13 the defendants. We have met with him in good faith now. We
14 have told him what we will produce. We have discussed and
15 compromised on every one of his issues. We have -- we did
16 so the first time and it was only his running down to court
17 before we had an opportunity to meet and actually meet and
18 confer that he brought this to the court's attention in the
19 first place. It didn't need to happen, it shouldn't have
20 happened, counsel working together and cooperatively under
21 Utah's rules should have been able to work this out and
22 there was no need for this motion. So we have addressed
23 that already in our objections to the order that's been
24 filed and I'll leave it on that.

00:46:38

00:46:53

25 THE COURT: All right. Thank you. Any response,

1 Mr. Andrus?

2 MR. ANDRUS: Yes. This case falls squarely precisely
3 on Federal Rules of Civil Procedure 37(a)(5)(A). They have
4 now produced some documents in piecemeal but only after we
00:47:13 5 have had to file our motion. It has been disguised as
6 supplemental responses and we have asked for specific
7 documents. It's like if we paint a certain grain on the sea
8 and then they provide the whole beach and try and have us
9 figure it out but we have -- or give us a box of Whitman
00:47:35 10 Sampler Chocolates without the map inside the box. So we
11 really have been hampered, it has obstructed our rights. We
12 have got both plaintiffs depositions scheduled for next
13 week. And in light of this further delay, we would ask for
14 -- that those be postponed until they provide us with these
00:47:54 15 documents so that we can prepare ourselves for those
16 depositions.

17 And so this has obstructed plaintiffs' rights. We're
18 now six months and now a month or two away from the
19 discovery cutoff and they have just jammed us on the
00:48:11 20 depositions and then when we have had to bring a motion then
21 they bring a few documents and so this -- this squarely --

22 THE COURT: Well, so there is two questions in this
23 regard, attorney's fees and whether or not the depositions
24 should be continued.

00:48:31 25 Mr. Barton, anything further you would like to say?

1 MR. BARTON: Yes, Your Honor. Thank you. First let me
2 address the depositions because that is critical. As we
3 have briefed before this court and as is evident in the
4 record in this case, we have been asking for dates for
00:48:50 5 plaintiffs depositions since January of this year. Since
6 January. And talk about stalling and obfuscation and
7 evasiveness, the plaintiff has absolutely refused to agree
8 to dates.

9 Finally, when I met with him in person on May 3rd I sat
00:49:07 10 down with him and the first topic was I need to be sure that
11 those depositions are going forward as noticed because we
12 have had too many times where you have just avoided the
13 question or refused to answer or refused to provide us a
14 date, we're entitled to take those depositions. They're the
00:49:22 15 plaintiffs in this case, they brought this lawsuit, they
16 have the burden of proof. And so they are obligated to
17 provide what testimony they know and what evidence they have
18 when we ask for that evidence. He, in our meet and confer,
19 if you look at Exhibit B to our -- to my -- to the statement
00:49:42 20 with regard to our meet and confer, he confirmed for me that
21 he would produce his clients on that date. And now at this
22 last minute once again I'm being ambushed at a hearing where
23 this was not even an issue and he is now saying that he
24 wants to back out of that date as well. Those depositions
00:50:01 25 should go forward as noticed and as agreed and as confirmed

1 in our meet and confer. And for him to try and back out now
2 when we have prepared for those dates and properly noticed
3 those dates and patiently awaited for those dates is
4 absolutely ridiculous. So the depositions absolutely have
5 to go forward.

6 Secondly with regard to -- I can't remember what the
7 other issue was. Oh, the fees.

8 THE COURT: The fees.

9 MR. BARTON: That has been briefed, Your Honor. That's
10 been briefed. We'll submit that on our briefs.

11 THE COURT: All right. And that will be taken under
12 advisement. Excuse me, I am going to order that the
13 depositions go forward as noticed. However, if based upon
14 the information to be provided within the 20 days there is a
15 good faith reason as to why those should be reopened the
16 court will consider it. All right?

17 MR. ANDRUS: Very good.

18 THE COURT: All right.

19 MR. BARTON: Thank you, Your Honor.

20 THE COURT: As to the fees, we'll take that under
21 advisement see where we go with this. All right?

22 So the only issue that needs to be decided and will be
23 decided quickly because in two weeks I'm going to be
24 retiring, you will get the answer to the issue regarding the
25 relevant timeframe very quickly. All right?

1 MR. ANDRUS: Okay. Thank you.

2 MR. BARTON: Thank you, Your Honor.

3 THE COURT: All right. Is there anything further
4 today.

00:52:00

5 MR. BARTON: I hope you recover your voice soon.

6 THE COURT: Boy, so do I. Thank you. All right.

7 MR. BARTON: Thank you for doing this. It was probably
8 not pleasant. Have a great day.

9 THE COURT: Have a good day yourself. Thank you.

00:52:13

10 MR. ANDRUS: Thank you very much.

11 THE COURT: All right.

12 MR. BARTON: Thank you.

13 MR. ANDRUS: Thank you. You did it.

14 THE COURT: All right. We'll take note of that too.

00:52:23

15 All right. Thank you gentlemen. Have a good rest of the
16 day.

17 MR. BARTON: Thank you.

18 (Whereupon, the hearing concluded.)

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REPORTER'S CERTIFICATION

I hereby certify that the foregoing transcript was taken from a tape recording stenographically to the best of my ability to hear and understand said tape recording, that my said stenographic notes were thereafter transcribed into typewriting at my direction.

Dated this 30th day of July, 2019.

Laura W. Robinson